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No. 94-1482

Supreme Court, U.S.
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In the Supreme Court
of the United States

October Term, 1994

LEROY CLOUSER, et al.,

Petitioners

v.

DAN GLICKMAN,
SECRETARY OF AGRICULTURE,
UNITED STATES OF AMERICA, et al.,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE NINTH CIRCUIT

**SECOND SUPPLEMENTAL BRIEF OF PETITIONERS
IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

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June 15, 1995

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Pursuant to this Court's Rule 15.7, Petitioners respectfully file this Second Supplemental Brief to inform the Court of a Resolution of the Board of Commissioners of Josephine County, Oregon, (Second Supp. Br. App-1). This County Resolution affects a

segment of the R.S. 2477 road right-of-way system claimed to serve the Robert E. mining operations in this case. Petitioners respectfully request that this Court take judicial notice of the County Resolution.

The Josephine County Resolution demonstrates that the Ninth Circuit Court of Appeals decision, enabling the Forest Service to determine establishment of R.S. 2477 rights-of-way and to bar motorized access over existing roads for federal land management purposes, directly conflicts with state public highway programs. The Ninth Circuit decision is also not responsive to important State and local governmental interests to protect the public health, safety and welfare of private land owners, mining claimants and other citizens using R.S. 2477 public rights-of-way to access private lands and unpatented mining claims within national forests.

The County Resolution further demonstrates that the R.S. 2477 Nevada District Court dispute, cited in Petitioners' Supplemental Brief page 7, n. 3, extends beyond Nevada. United States of America v. Nye County, Nevada, U.S. Dist. Ct., Dist. of Nevada, Case No. CV-S-95-00232-LDG (RJJ).

CONCLUSION

Significant State interests in R.S. 2477 rights-of-way provide basis for granting petitioners' petition for a writ of certiorari.

Respectfully submitted,

Philip F. Schuster, II
Counsel of Record
Roger F. Dierking
Counsel for Petitioners

Dated: June 15, 1995

JOSEPHINE COUNTY
BOARD OF COMMISSIONERS

RESOLUTION

Carl Alleman, a resident of Josephine County and other owners of privately owned and unpatented mining claim properties have petitioned this Board for a finding and resolution concerning the establishment of a (sic) R.S. 2477 public highway right-of-way over an (sic) road network identified in the attached map.

Based on Josephine County mining, historical road records, and other information considered by this Board, the Board finds:

1. Extensive historic mining operations occurred in this area during the 1800's involving appurtenant road egress and ingress for commercial and domestic purposes of nature and with sufficient

frequency as to establish an R.S. 2477 public highway pursuant to Oregon laws.

2. The road has been used for motorized traffic for over 60 years.

3. There are ongoing commercial and domestic uses of lands in the area which are presently served by the road and in which the State of Oregon through Josephine County has important state and public interests.

4. The road identified on the map is an R.S. 2477 public highway right-of-way established pursuant to State of Oregon laws in 1883 on unreserved public lands of the United States.

5. Rights to use the R.S. 2477 public highway right-of-way for motorized access by the owners of land and unpatented mining claims served by the road have not been abandoned or terminated under Oregon laws.

6. Motorized use of the road is necessary for the health, safety and welfare of persons involved in the commercial and domestic uses served by the road.

RESOLUTION: Based on the foregoing findings, the Board resolves that said road is an R.S. 2477 right-of-way acquired and protected under federal and Oregon laws and that the owners of the land and unpatented mining claims served by the road have the right of motorized access over the road.

Fred Borngasser
County Commissioner

Irv Whiting
County Commissioner

Harold Haugen
County Commissioner

Date: June 14, 1995